

By Representative Sells

SSB 5211 - H COMM AMD

By Committee on Labor & Workforce Development

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 49.44
4 RCW to read as follows:

5 (1) Except as provided in subsection (2) of this section, an
6 employer may not:

7 (a) Require, directly or indirectly, as a condition of employment
8 or continued employment, that any employee or prospective employee
9 submit any password or other related account information to gain
10 access to the employee's or prospective employee's personal account or
11 profile on a social networking web site; or

12 (b) Demand access in any manner to an employee's or prospective
13 employee's personal account or profile on a social networking web
14 site.

15 (2) An employer conducting an investigation does not violate
16 subsection (1) of this section if:

17 (a) The investigation is undertaken in response to receipt of
18 specific information about the employee's or prospective employee's
19 activity on his or her personal account or profile;

20 (b) The purpose of the investigation is to: (i) Ensure compliance
21 with applicable laws, regulatory requirements, or prohibitions against
22 work-related employee misconduct; or (ii) investigate an allegation of
23 unauthorized transfer of an employer's propriety information,
24 confidential information, or financial data;

25 (c) The employer informs the employee or prospective employee of
26 the purpose of the investigation, describes the information for which
27 the employer plans to search, and permits the employee or prospective

1 employee to be present during the search of the employee's or
2 prospective employee's personal account or profile;

3 (d) The employer requires the employee or prospective employee to
4 share the activity or content that was reported to the employer;

5 (e) The scope of the search of the employee's or prospective
6 employee's personal account or profile does not exceed the purpose of
7 the investigation; and

8 (f) The employer maintains as confidential any information
9 obtained pursuant to an investigation other than information that may
10 be relevant to a criminal investigation.

11 (3) This section does not prevent or prohibit an employer from:

12 (a) Obtaining information about an employee or prospective
13 employee that is in the public domain or that is otherwise obtained in
14 compliance with this section; or

15 (b) Complying with the requirements of state or federal statutes,
16 rules or regulations, case law, or rules of self-regulatory
17 organizations.

18 (4) For purposes of this section:

19 (a) "Social networking web site" means an internet-based service
20 that allows individuals to: construct a public or semipublic profile
21 within a system created by the service; create a list of other users
22 with whom they share a connection within the system; and view and
23 navigate their list of connections and those made by others within the
24 system. "Social networking web site" does not include a social
25 network, intranet, or other technology platform intended primarily to
26 facilitate work-related information exchange, collaboration, or
27 communication by employees.

28 (b) "Employer" means any person, firm, corporation, partnership,
29 business trust, legal representative, or other business entity which
30 engages in any business, industry, profession, or activity in this
31 state and employs one or more employees, and includes the state, any
32 state institution, state agency, political subdivisions of the state,
33 and any municipal corporation or quasi-municipal corporation.

34

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.44 RCW
2 to read as follows:

3 Any person aggrieved by a violation of section 1 of this act may
4 bring a civil action in a court of competent jurisdiction. The court
5 may:

6 (1) Award a penalty in the amount of five hundred dollars to a
7 prevailing employee or prospective employee in addition to any award
8 of actual damages;

9 (2) Award reasonable attorneys' fees and costs to the prevailing
10 employee or prospective employee; and

11 (3) Pursuant to RCW 4.84.185, award any prevailing party against
12 whom an action has been brought for a violation of section 1 of this
13 act reasonable expenses and attorneys' fees upon final judgment and
14 written findings by the trial judge that the action was frivolous and
15 advanced without reasonable cause."

16

EFFECT: Provides that an employer conducting an investigation
may require a password or demand access to a personal account or
profile if:

- The investigation is undertaken in response to receipt of specific information about the employee or prospective employee's activity on his or her personal account or profile;
- The purpose of the investigation is to: ensure compliance with applicable laws, regulatory requirements, or prohibitions against work-related employee misconduct; or investigate an allegation of unauthorized transfer of an employer's proprietary information, confidential information, or financial data;
- The employer informs the employee or prospective employee of the purpose of the investigation, describes the information for which the employer will search, and permits the employee or prospective employee to be present during the search;
- The employer requires the employee or prospective employee to share the activity or content that was reported;
- The scope of the search does not exceed the purpose of the investigation; and
- The employer maintains any information obtained as confidential, unless the information may be relevant to a criminal investigation.

34 Defines "social networking web site" to exclude a social network,

intranet, or other technology platform intended primarily to facilitate work-related information exchange, collaboration, or communication by employees. Defines "employer" to mean a person or business entity which engages in any business, industry, profession, or activity in Washington and employs one or more employees, and includes the state, political subdivisions of the state, and any municipal corporation.

Clarifies that a private right of action is created.

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